

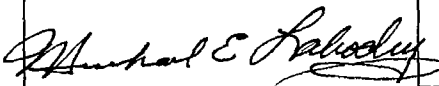
MANUAL CHANGE TRANSMITTAL

RW 0001 (REV. 10/93)

☒ XXRW MANUAL CHANGE
(1993 Edition)

RWMC-67

☐PROCEDURAL HANDBOOK
(1984 Edition)RWPH- - -
TRANSMITTAL# -

TITLE	APPROVED BY	DATE ISSUED
CONDEMNATION	 MICHAEL E. LAHODNY	March 3, 1999
SUBJECT AREA	ISSUING UNIT	Page 1 of 1
Chapter 9, Condemnation	Acquisition	
SUMMARY OF CHANGES		
Revises Section 9.08.09.00.		

PURPOSE**Section 9.08.09.00 Order for Possession Emergency Situations No Appraisal**

Revises Section 9.08.09.00 to indicate the Regions/Districts have the authority to approve use of an estimated compensation, in emergency situations where there is insufficient time to complete an appraisal of a required property prior to the date possession is needed.

BACKGROUND

Change is being made to reflect delegation of authority to Regions/Districts.

PROCEDURES

This updates Section 9.08.09.00 of Condemnation Chapter 9.

EFFECTIVE DATE

Effective immediately.

MANUAL IMPACT

- Insert the attached pages in the manual.
- Record the action on the Revision Record.

REVISION SUMMARY

<u>Chapter</u>	<u>Remove Old Page</u>	<u>Insert New/Revised Page</u>	<u>Replace Interim Change</u>
9 - Sections	9.08-3 through 9.08-4 (Rev. 5/98)	9.08-3 (Rev. 1/99) through 9.08-4 (Rev. 5/98)	N/A

9.08.08.02 Circumstances

Service shall be made not less than 30 days prior to the time possession is to be taken pursuant to the Order under the following circumstances:

1. The Department has deposited probable compensation pursuant to a deposit initiated by an owner (CCP 1255.040 and 1255.050) or
2. The Department has deposited the probable compensation and the defendant in possession has either:
 - Expressed in writing a willingness to surrender possession of the property on or after a stated date, or
 - Withdrawn any portion of the deposit.

If the District seeks possession on either of the two conditions in 2. above, CCP Section 1255.460 requires that the OP:

- Recite that the OP is made pursuant to CCP Section 1255.460.
- Describe the property to be acquired. The description may be by reference to the Complaint.
- Include the date after which the Department is authorized to take possession. This can be the date requested by the defendant, or, if a portion of the deposit is withdrawn, not less than 30 days after the date the deposit was made.

9.08.09.00 Order for Possession - Emergency Situations - No Appraisal

Emergency projects are those that preserve health, safety, welfare, or property. In emergency situations where there is insufficient time to complete an appraisal of a required property prior to the date possession is needed, Regions/Districts have the authority to approve use of an estimated compensation. The appraiser executes an affidavit stating:

- The reasons why possession must be obtained immediately.

- That an adequate appraisal cannot be made in time.
- The status and estimated date of availability of the appraisal.
- A good faith estimate of the probable amount of compensation.

CCP Section 1245.230 requires an appraisal and offer thereof be made within 90 days of the adoption of a Resolution of Necessity. The Regional Legal Office prepares a motion requesting the Court to accept the estimated compensation as the deposit. The motion accompanies the Notice of Transfer of Funds, the OP, and the affidavit. The Court issuance of the OP requires compliance with the affidavit, which must be as accurate as possible.

9.08.10.00 Order for Possession - 3-Day Notice

The Court may make an OP to be effective in not less than three days and as it deems appropriate under the circumstances of the case if a deposit of probable compensation has been made and the Court finds:

- The Department has an urgent need for possession, and
- Possession will not displace or unreasonably affect any person in actual and lawful possession.

When asking the Regional Legal Office for a 3-day OP, the District shall state the justification. The Regional Legal Office prepares the Application and the OP and sends them to the District. The designated Right of Way Agent shall execute the Declaration and follow procedures for filing the OP.

9.08.11.00 Declaration of Service of Order for Possession

Where service of the copy of the OP is by regular or certified mail, a Declaration of Mailing (Form RW 9-14) shall immediately be executed and transmitted to the Regional Legal Office.

Where a copy of the OP is personally served, the District sends the Proof of Service to the Regional Legal Office. The Declaration should state that the

person served is a record owner or a person in possession.

9.08.12.00 Notice of Tax Cancellation

Upon securing possession under OP, the District must notify the appropriate local taxing authorities of the action taken. (See Acquisition Section 8.66.04.00 for variations in notice requirements.)

9.08.13.00 Stay of Order for Possession Because of Hardship

Within 30 days of service of an OP, a defendant or occupant may request the Court to stay its Order and set a new possession date or impose terms and conditions on the property's use. The Court may do this upon a dual finding of fact, e.g., substantial hardship on the defendant or occupant versus the Department's need in seeking early possession. The Court may make an Order appropriate to the circumstances.

A defendant may make a motion to stay the Order, in which case the Regional Legal Office coordinates with the District to present evidence in support of obtaining the OP.

Where a person occupying property refuses to move by the possession date indicated in the OP,

possession can be obtained through a Writ of Assistance. The District notifies the Regional Legal Office to initiate this process as necessary.

9.08.14.00 Disposing of Building Improvements on Property Under Order for Possession

The right to use the land under OP includes the right to dispose of improvements. The Property Management chapter includes instructions covering the issuance of Bills of Sale for such improvements.

Right of Way Improvements and Personal Property Inventory and Disposal Record must be prepared at the time of obtaining possession. If there is a dispute as to whether an item is an improvement, the court can be asked to make a determination. (See CCP 1260.030.)

9.08.15.00 Owner Abandons Personal Property

If an owner refuses to remove personal property or abandons it, the District shall refer the problem to the Regional Legal Office. It may be necessary to arrange through a law enforcement agency for removal and storage of the personal property in a public warehouse for the account of the owner.